

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA  
SOUTHEASTERN DIVISION

Ruben Hernandez,

Petitioner,

VS.

United States of America,

Respondent.

United States of America,

Plaintiff,

VS.

Ruben Hernandez,

Defendant.

**ORDER FOR JUDGMENT  
AND JUDGMENT  
DENYING MOTION TO VACATE  
SET ASIDE, OR CORRECT  
SENTENCE**

Civil File No. 3:06-cv-15

Crim. File No. 3:03-cr-90-02

Crim. File No. 3:04-cr-57-02

The above-captioned matter came regularly on for hearing on a status conference on December 3, 2008. The Petitioner Ruben Hernandez (hereafter “Hernandez”) appeared by telephone conference call and through his counsel Brian Toay. The Respondent appeared through assistant United States Attorney Christopher Cory Myers.

During the course of the status conference Hernandez informed the court that he wanted to waive his right to proceed on his 28 U.S.C. 2255 motion, that he wished for the petition to be denied with prejudice and that the original sentence and judgment should be allowed to stand. The Court informed Hernandez that he had a right to a hearing on the two remaining issues, that the Court was prepared to go forward to an evidentiary hearing and clarified the issues pending before the Court. Hernandez persisted in waiving his right to move forward and asked that the

petition be dismissed.

The record under these circumstances conclusively shows that Hernandez is entitled to no relief. His motion to vacate is therefore **DENIED**, and this action is **DISMISSED WITH PREJUDICE**. In addition, the Court certifies that an appeal from the denial of this motion may not be taken *in forma pauperis* because such an appeal would be frivolous and cannot be taken in good faith. Coppedge v. United States, 369 U.S. 438, 444-45 (1962). Dismissal of this motion is not debatable, reasonably subject to a different outcome on appeal, or otherwise deserving of further proceedings. Barefoot v. Estelle, 463 U.S. 880, 893 n. 4 (1983). Therefore, a certificate of appealability will not be issued by this Court.

**IT IS SO ORDERED AND ADJUDGED** that judgment is entered for the United States of America and against Petitioner and his motion pursuant to 28 U.S.C. § 2255 be **DISMISSED WITH PREJUDICE**.

Dated this 3<sup>rd</sup> day of December, 2008.

/s/ Ralph R. Erickson  
Ralph R. Erickson, District Judge  
United States District Court